



OFFICE OF THE ATTORNEY GENERAL • STATE OF TEXAS  
JOHN CORNYN

January 23, 2001

Ms. Julie Joe  
Assistant Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2001-0229

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 143485.

The Office of the Attorney General (the "OAG") received a request for information pertaining to an investigation prompted by allegations made by certain employees in Area 3 of the OAG's child support division. You indicate that a copy of the investigative report was released to the requestor with certain information redacted. You have submitted for our review both a redacted and an unredacted copy of the investigative report, as well as representative samples of additional information that is responsive to the request.<sup>1</sup> Among other arguments, you assert that the information redacted from the report is excepted from disclosure under section 552.117 of the Government Code, and that the additional information withheld from the requestor is excepted from disclosure under section 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the OAG may withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Thus, if an employee at issue in the submitted report timely elected to keep confidential his or her section 552.117 information, the OAG must withhold the employee's home address and telephone numbers, social security number, and any information that reveals whether the employee has family members.

Section 552.103 excepts from disclosure information:

relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

[Information is excepted from disclosure] only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). Section 552.103 was intended to prevent the use of the Act as a method of avoiding the rules of discovery in litigation. Attorney General Opinion JM-1048 at 4 (1989). The litigation exception enables a governmental body to protect its position in litigation by requiring information related to the litigation to be obtained through discovery. Open Records Decision No. 551 at 3 (1990). To show that the litigation exception is applicable, the OAG must demonstrate that (1) litigation was pending or reasonably anticipated at the time of the request and (2) the information at issue is related to that litigation. *See* Gov't Code § 552.103(a), (c); *see also* *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You assert that litigation involving the OAG was reasonably anticipated at the time of the request. To demonstrate that litigation is reasonably anticipated, the OAG must furnish evidence that, at the time of the request, litigation was realistically contemplated and was more than mere conjecture. Gov't Code § 552.103(c); Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). This office has found that litigation was reasonably anticipated for purposes of section 552.103 when the potential opposing party filed a complaint with the Equal Employment Opportunity Commission ("EEOC"). Open Records Decision No. 336 at 1 (1982).

In support of your contention that the OAG reasonably anticipated litigation at the time the request was received, you have provided for our review an EEOC complaint and additional documentation pertaining to the complaint. We believe in this instance that the OAG has demonstrated that litigation was reasonably anticipated at the time of the request. As to the second prong of the above-stated test, upon careful review of the submitted information and supporting documentation, we also find that the requested information relates to the anticipated litigation. Except as otherwise noted below, the OAG may therefore withhold the responsive information pursuant to section 552.103 of the Act.

Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, to the extent the opposing party in the anticipated litigation has seen or had access to any of the information responsive to the request, there is no justification for withholding that information from the requestor pursuant to section 552.103. In this instance, we have no indication that the opposing party in the anticipated litigation has seen or previously been granted access to any of the information the OAG seeks to withhold. We also note, however, that the applicability of section 552.103 ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report

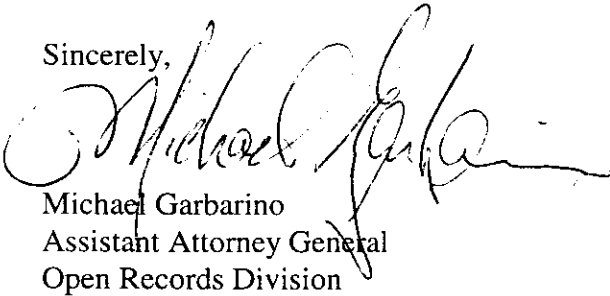
that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID# 143485

Encl. Submitted documents

cc: Ms. Belinda Diaz  
5001 North 5<sup>th</sup>  
McAllen, Texas 78504  
(w/o enclosures)